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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/778,746	02/08/2001	Nicolas Voyer	202722US2	6586
22850	7590	06/14/2004	EXAMINER	
OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			LELE, TANMAY S	
			ART UNIT	PAPER NUMBER
			2684	13

DATE MAILED: 06/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action	Application No.	Applicant(s)
	09/778,746	VOYER, NICOLAS
Examiner	Art Unit	
Tanmay S Lele	2684	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 20 May 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) The period for reply expires 3 months from the mailing date of the final rejection.
- b) The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. The proposed amendment(s) will not be entered because:
 - (a) they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) they raise the issue of new matter (see Note below);
 - (c) they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: ____.

3. Applicant's reply has overcome the following rejection(s): _____.
4. Newly proposed or amended claim(s) ____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. The a) affidavit, b) exhibit, or c) request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
6. The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. For purposes of Appeal, the proposed amendment(s) a) will not be entered or b) will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: 17,25 and 31.

Claim(s) rejected: 15,16,18 -24,26 - 30.

Claim(s) withdrawn from consideration: _____.

8. The drawing correction filed on ____ is a) approved or b) disapproved by the Examiner.
9. Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. Other: _____.

Tanmay Lele
Tele: (703) 305-3462

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 20 May 2004 have been fully considered but they are not persuasive.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, with regards to claims 15 and 21, Applicant states, "It is respectfully submitted that one skilled in the art would not have been motivated to combine the teachings of Rohani and Dahlman because the combination of Rohan with Dahlman as suggested in the outstanding Office Action would change the principle of operation of Rohani since signals of the subscriber units are summed (requested power of the subscriber units are summed), and this would render Rohani unable to successively limit power of the subscriber units subscriber unit at a time," and further that, "Accordingly, there is no suggestion or motivation to make the proposed modification (combination)." Examiner respectfully disagrees that the combination would render Rohani unable to perform and further that no suggestion exists in the cited art. Note that Rohani states in column 3, lines 1 –4, "A subscriber unit's requested power may be determined by a direct request from the subscriber unit, or may be indirectly determined by examining metrics such as a frame erasure rate (FER)," while Dahlman states for example in column 6, lines 48 –

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55, "As mentioned earlier, quality can be measured as a function of BER, FER, a combination of BER and FER or any other quality parameter. The measured quality is compared with the QoS requirement (Q.sub.req) assigned to that radio bearer. If the measured quality is less than the required quality, then the comparator outputs a transmit power "up" command, e.g., a binary 1" (similar concepts are again noted in column 5, lines 54 –60). Continuing, note Rohani's mention of data types (column 1, lines 23 –38 and again in column 2, lines 60 –67) and Dahlman's related discussion (for example column 2, lines 30 –44 and again starting column 2, line 56 and ending column 3, line 4) and further both make mention of multi-bearer schemes (Rohani: column 6, lines 19 –32 and Figure 5 and Dahlman for example column 5, lines 36 –47 and Figure 1B). Thus it is respectfully believed there does exist commonality between the two cited references and further that Rohani could function as defined when combined with Dahlman due to this commonality (as noted above). Hence, Examiner is not persuaded by Applicant's arguments that the references cannot be combined for the cited motivation and further that when combined do not teach or recite the claimed as previously presented.

2. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Continuing in regards to claims 15 and 21, Applicant attempts to overcome the rejection by stating, "However, Chen also does not disclose the base station as recited in claim 15." Note that the combination as cited in the previous Office Action (as seen in paper number 11, page 2 – 4) and thus it is respectfully submitted that combination, when combined for the cited

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motivation, teach the structure claimed. Hence, Examiner is not persuaded by Applicant's arguments that the references when combined do not teach or recite the claimed as previously presented.

Conclusion

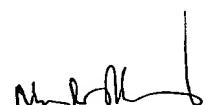
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tanmay S Lele whose telephone number is (703) 305-3462. The examiner can normally be reached on 9 - 6:30 PM Monday – Thursdays and on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nay A. Maung can be reached on (703) 308-7745. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 306-0377.

✓
Tanmay S Lele
Examiner
Art Unit 2684

tsl
June 7, 2004


NAY MAUNG
SUPERVISORY PATENT EXAMINER